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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 25.07.2025

% Judgment delivered on: 09.10.2025

\+ **LPA 434/2025, CAV 262/2025 & CM APPLs. 41683-84/2025**

INDIAN RENEWABLE ENERGY DEVELOPMENT AGENCY LIMITED ..... Appellant

Through: Mr. Raghavendra Shankar, ASG with Mr.Anshuman Chowdhury & Ms. Pallavi Mishra, Advs.

versus

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD & ORS. ..... Respondent

Through: Mr. Arun Bhardwaj, Sr. Adv. with Mrs. Suparna Srivastava, Mr. Nitai Agarwal, Ms. Neha Mishra, Ms.Arshha & Mr. Shashwat Dubey, Advs.

Mr. Rajesh Gogna, CGSC with Ms.Priya, Mr. Shivam Tiwari & Ms.Rebina, Advs. for UOI.

\+ **LPA 468/2025 & CM APPL. 44567-69/2025**

MINISTRY OF NEW AND RENEWABLE ENERGY GOVERNMENT OF INDIA & ANR. ..... Appellant

Through: Mr. Rajesh Gogna, CGSC with Ms.Priya, Mr. Shivam Tiwari & Ms.Rebina, Advs. for UOI.

versus

CHHATTISGARH STATE POWER DISTRIBUTION CO. LTD & ORS. ..... Respondent

Through: Mr. Arun Bhardwaj, Sr. Adv. with Mrs. Suparna Srivastava, Mr. Nitai Agarwal, Ms. Neha Mishra, Ms.Arshha & Mr. Shashwat Dubey, Advs.
Mr. Raghavendra Shankar, ASG with Mr.Anshuman Chowdhury & Ms.Pallavi Mishra, Advs. for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHAYA, C.J.

1. Since in these two intra-court appeals the same judgment and order dated 21.05.2025, passed by the learned Single Judge allowing W.P.(C) No. 4527/ 2017, is under challenge, both the matters have been taken up together and are being decided by the common judgment and order which follows:

FACTS

2. With a view to give thrust to Rooftop and other Small Solar Plants connected at distribution network at voltage levels below 33 kV under the Jawaharlal Nehru National Solar Mission, Ministry of New and Renewable Energy (hereinafter referred to as the '**Ministry**') of Government of India

launched a Scheme/ Programme of Generation Based Incentives (hereinafter referred to as '**GBI'**), and accordingly, issued guidelines for the said purpose on 16.06.2010 known as Guidelines for 'Rooftop PV & Small Solar Power Generation Programme (hereinafter referred to as the **'Guidelines'**)

3. As per the Guidelines, there are three players to work the said Scheme, namely (i) the Project Proponent which would be selected for development of solar power projects to be connected to distribution network, (ii) the Local Distribution Utility in whose area the plant is located and (iii) the Programme Administrator (Indian Renewable Energy Development Agency Limited, IREDA) which was to enter into a Memorandum of Understanding with the Distribution Utility for disbursement of GBI. The Programme Administrator, IREDA, is responsible for registration of projects seeking GBI, maintenance of a transparent system of the registered projects, issuance of certificates confirming GBI and disbursement of GBI to the Distribution Utility.

4. The Project Proponent is the developer/ owner of the Rooftop PV or other Small Solar Generation Project who wishes to participate in the Scheme/ Programme and is responsible for applying for pre-registration, execute documents, apply for registration, intimate the Programme Administrator about the achievement of milestones, comply with its obligations and reporting requirements, fulfil its financial obligations, operate the solar power plant and provide appropriate facility/ instrumentation/ metering arrangements to enable remote monitoring of generation of power. The role of the Distribution Utility is to enter into a Memorandum of Understanding (MoU-1) with the Project Proponent for the

purchase of power at rates to be determined by the concerned State Electricity Regulatory Commission (hereinafter referred to as the '**SERC**'). The Distribution Utility was to enter into another Memorandum of Understanding (MoU-2) with the Programme Administrator (IREDA) for availing GBI. The Distribution Utility was also to provide certificate of power purchased from the Project Proponent to the Programme Administrator on monthly basis.

5. Thus, under the scheme, the Distribution Utility is to purchase power from the Project Proponent, and thereupon, it is to claim GBI from the Programme Administrator (IREDA) on fulfilment of certain requirements.

6. The issue raised in the writ petition filed by the respondent No.1 – petitioner (Chattisgarh State Power Distribution Company – the Distribution Utility) relates to the computation of GBI to be paid to the Distribution Utility by IREDA, the appellant. The prayer made in the writ petition is extracted hereunder:

> *"a. Issue a writ of mandamus or any other writ, order or direction in the nature thereof to the Respondent Nos. 1 & 2 to pay Generation Based Incentive to the Petitioner as per the GBI Policy dated 16.06.2010, that is, by computing GBI as the difference between the tariff determined by the CERC vide order dated 26.04.2010 in Petition No. 53/2010 (i.e. Rs. 17.91/kWh) and the Base Rate (i.e. Rs. 5.665/ kWh), including for captive consumption of solar power generated (to be measured on AC side of the inverter), with effect from the date of commissioning of the solar power plants established by the Respondent Nos. 6 & 7 respectively, and to pay the balance GBI due as a result of such computation along with interest thereon at the rate of 1.25 per cent per month;*
>
> *b. In the alternative, issue a writ of mandamus or any other writ, order or direction in the nature thereof to the Respondent Nos. 1 & 2 to pay*

Generation Based Incentive to the Petitioner on the basis of the difference between the tariff determined by the CSERC vide order dated 26.04.2010 in Petition No. 53/2010 (i.e. Rs. 17.91/ kWh) and the Base Rate (i.e. Rs. 5.665/ kWh), including for captive consumption of solar power generated (to be measured on AC side of the inverter), with effect from the date of commissioning of the solar power plants established by the Respondent Nos. 6 & 7 respective, and to pay the balance GBI due as a result of such computation along with interest thereon at the rate of 1.25 per cent per month;

c. Pass any other order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case."

7. A Memorandum of Understanding (MoU-1) was entered into between the respondent No.1 – petitioner and respondent Nos. 6 and 7, who are Project Proponents, stipulating therein that applicable tariff has to be determined as per order dated 08.09.2008 read with an order dated 09.07.2010 passed in Suo Motu Petition No. 16/2008(T) by Chhattisgarh State Electricity Regulatory Commission (hereinafter referred to as the "**CSERC**"). Thereafter, the respondent No.1 – petitioner was registered by IREDA (appellant), confirming its eligibility to avail GBI under the scheme, on 17.09.2010. The respondent No.1 – petitioner entered into another Memorandum of Understanding (MoU-2) on 26.04.2011 with IREDA – appellant to pursue the objective of disbursement of GBI under the Scheme. The said Memorandum of Understanding (MoU-2) contained in its clause 1.4 the terms for GBI computation, which is extracted hereunder:

"1.4. PREMISE FOR GBI COMPUTATION: Applicable rate for the purpose of GBI computations, payable to the GBI APPLICANT for Solar Power purchase shall be computed as difference between (a) Applicable CERC Tariff Rate (ACTR) and (b) Applicable Base rate (BR), as defined below:

(a) Applicable CERC tariff rate (ACTR) shall mean the Tariff Rate as determined by the Central Electricity Regulatory Commission (CERC) for Solar PV or Solar Thermal Power Projects, as the case may be, and shall be linked to financial year of commissioning of the Solar Power Project as per relevant Tariff Order of CERC. In case accelerated depreciation is claimed by the Project Proponent, the applicable tariff rate shall be in accordance with CERC determined, tariff for projects claiming accelerated depreciation as per the relevant Tariff Order of CERC. The ACTR shall be confirmed by concerned distribution utility for each project while claiming reimbursement of GBI from PROGRAMME ADMINISTRATOR, and

(b) Applicable Base Rate (BR) shall mean rate of Rs.5.50 per kWh for projects to be commissioned in financial. Year 2010-11. The Applicable Base Rate shall be escalated at 3% per annum for each year for projects commissioned in subsequent. financial years. The Applicable Base Rate once determined for each solar project shall remain constant over the duration of 25 years and in no event either the Project Administrator or MNRE assumes any liability over and above the GBI as calculated above either to the GBI Applicant or any other person.

CLAIM FOR GBI: The GBI APPLICANT shall submit its claim for GBI towards partial compensation) of power purchase cost of Solar Power as per RPSSGP Guidelines to the PROGRAMME ADMINISTRATOR on monthly basis, upto 15th day of each month. The claim for payment of GBI by the GBI APPLICANT shall be accompanied and supported by documentary evidences of payment of electricity bill to the PROJECT PROPONENT for the relevant monthly period.

The GBI APPLICANT shall submit consolidated claims for all Solar Projects outlining detailed statement (as per ANNEXURE A & SCHEDULE-3) with break-up of solar power generation, applicable tariff, details of payment made to Project Proponent, claim for GBI in respect of each Solar Project for the relevant monthly period.''

8. At this juncture itself, it will be relevant to extract the relevant clause containing the formula for the computation of GBI as available in the guidelines/ scheme floated on 16.06.2010. Clause 1 of the said scheme, which provides the rule to compute GBI, is extracted hereunder:

"***About the Programme***

[…]

- *Generation Based Incentive (GBI) will be payable to the distribution utility for power purchased from solar power project selected under these guidelines, including captive consumption of Solar Power generated (to be measured on AC side of the inverter). The GBI shall be equal to the difference between the tariff determined by the Central Electricity Regulatory Commission (CERC) and the Base Rate, which will be Rs 5.50 per kWh (for Financial year 2010-11), which shall be escalated by 3% every year.*

Explanation: *Base Rate of Rs 5.50/unit to be considered for the purpose of computation of GBI, shall remain constant over duration of 25 years. Thus, GBI determined for a project (which is the difference of CERC determined tariff and Base Rate) shall remain constant for entire duration of 25 years.*

Base Rate for projects to be commissioned during each subsequent year shall also be modified at escalation factor of 3% p.a. and such escalated Base Rate shall remain constant over duration of 25 years.

- *GBI shall be payable to the distribution utility for period of 25 years from the date of commissioning of the project.*
- *IREDA has been designated as 'Programme Administrator' by the Ministry of New and Renewable Energy for administering the generation based incentive programme for rooftop PV and other small solar power plants.*"

9. Clause 8 of the scheme dated 16.06.2010 contains a provision of 'Power to Remove Difficulties', according to which, if any difficulty arises in giving effect to the Guidelines or interpretation of the Guidelines, a Committee will be constituted by the Ministry, which shall meet and take a decision that shall be binding on all the parties. Clause 8 of the scheme dated 16.06.2010 is also extracted hereunder:

> *"**8. Power to remove difficulties***
>
> *If any difficulty arises in giving effect to any provision of these guidelines or interpretation of the guidelines, the Committee to be constituted by Ministry of New and Renewable Energy shall meet and take decision, which will be binding on all parties."*

10. It is also relevant to note that CSERC *vide* its order dated 08.09.2008 declared the tariff at the rate of Rs. 15.84/kWh. We may also notice that as per the scheme dated 16.06.2010 base rate of Rs. 5.50/kWh was to be considered for the purposes of computation of GBI, which shall remain constant for a duration of 25 years.

11. According to the scheme dated 16.06.2010, the GBI to be determined for a project is the difference between the tariff determined by the Central Electricity Regulatory Commission (hereinafter referred to as the "CERC") and the base rate, which was to remain constant for the entire duration of 25 years. The CERC in Petition No. 53/2010 (suo moto) passed an order determining the tariff for Solar PV to be Rs. 17.91/kWh whereas the CSERC *vide* its order dated 08.09.2008, passed in Petition No. 16 of 2008(T) determined the tariff for purchase of solar power at the rate of Rs. 15.84/kWh.

12. However, *vide* an email communication dated 22.06.2012, the appellant – IREDA communicated to the respondent No.1 – petitioner that though IREDA while processing the claim of GBI had released the amount calculated at Rs. 17.91 *minus (-)* Rs. 5.67 i.e. Rs. 12.24/kWh but the applicable GBI rate is Rs. 10.17/kWh i.e. Rs. 15.84/- *minus (-)* Rs. 5.67/-. The said communication also stated that the amount of Rs.16,06,362/- was released extra and that the same shall be adjusted/ reconciled in future claims. The said email communication is extracted hereunder:

> "***Rediffmail Plus***
>
> *Mailbox of cecomcseb@rediffmail.com*

From: *R.K. Vimal <rkvimal@ireda.gov.in>*
To: *"cecomcseb@rediffmail.com" <cecomcseb@rediffmail.com>*
Subject: *M/s. Singhal Forestry Pvt. Ltd. claim processed by IREDA under RPSSGP Scheme*
-reg---------MOST URGENT
Date: *Fri, 22 Jun 2012 17:47:30 IST*
Cc: *"B.V. Rao" <bvrao@ireda.gov.in>, Monika Solanki <monikasolanki@ireda.gov.in>, Deepa <deepa@ireda.gov.in>*

Kind attention: Shri A.K. Guha, Superintending Engineer, CSPDCL, Raipur

This is in continuation to IREDA's letter dated 18.06.2012 (Attached) with respect to above captioned subject project.
In continuation to the same, we have to inform you as under:

- *IREDA had processed all the claims received at IREDA for the above project i.e. 9th November 2011 till 1st March 2012 and accordingly, GBI amount has been released amounting to Rs.94,98,485/-. This amount has been calculated at Rs.17.91 minus Rs.5.67 i.e. Rs.12.24 for 776020 kWH (net units).*
- *Please note that the applicable GBI rate with respect to the said project is Rs.10.17/kWh i.e. Rs.15.84 - Rs.5.67. Hence, the total amount to be released is Rs.78,92,123/-.*

Keeping in view the same, an amount of Rs.16,06,362/- has been released extra for the said claims and the same will be adjusted/reconciled in the future claims.

Further, it may be noted that the same GBI rate of Rs.10.17/kWh will be applicable for other projects in the state of Chhattisgarh and we request you to process your claims accordingly.

It may also be noted as per MNRE decision, the claims will be processed by IREDA based on net power exported to Grid.

Regards

R.K.Vimal
Assistant General Manager (TS)
IREDA Limited
Core 4A, 1st Floor,
India Habitat Centre,

New Delhi-110003
Direct No. : 011-24682349
Tel. : 011-2468206-10 (Extn. 212)
Fax : 011-"

13. It is also relevant to be pointed out that a meeting of the 'Committee to Remove Difficulties' in implementation of the scheme was held on 15.03.2013 under the Chairmanship of the Joint Secretary of the Ministry wherein the issue at hand was also considered and it was decided that the tariff at the time of registration of the project i.e. Rs. 15.84/kWh shall alone be considered for payment of GBI which shall remain constant for a period of 25 years. The said decision by the Committee was taken in the light of the tariff revision made by the CSERC *vide* its order dated 09.10.2012, where the tariff was determined at the rate of Rs. 17.91/kWh. The said order of the CSERC also provided that such tariff shall be applicable for the solar plants who would qualify under the scheme.

14. The minutes of the 6th meeting of the Committee to Remove Difficulties held on 15.03.2013 was circulated *vide* letter of the Ministry, dated 01.04.2013. The decision of the Committee was communicated to the respondent No.1 – petitioner by the appellant *vide* letter dated 29.04.2013, wherein it was clearly stated that the tariff at the time of registration of the project (i.e. Rs.15.84/kWh) shall alone be considered for payment of GBI. The said letter also stated that if the State Government decided to provide a higher revised tariff to the initially selected projects, such an increase would have to be met only by the State Utility/Discom and not by the Central Government. Accordingly, it was reiterated by the appellant that tariff at the

rate of Rs. 15.84/kWh will be considered for payment of GBI which shall be constant for a period of 25 years.

15. The Ministry again issued an Office Memorandum clarifying that tariff at the time of the registration of project shall only be considered for payment of GBI which shall remain constant for a period of 25 years and any upward revision of tariff by concerned SERC from back date shall not be counted for calculation of GBI.

16. The respondent No.1 – petitioner filed a petition under Section 86(1)(e) of the Electricity Act before CSERC for removal of difficulty in implementation of the order dated 23.12.2013 passed in petition No. 23 of 2013(D) and 35 of 2013(D).

17. It is to be noticed that petition Nos. 23 of 2013(D) and 35 of 2013(D) were filed by the Project Proponents, respondent Nos. 6 and 7, with the prayer to amend the Power Purchase Agreement and directing the respondent No.1 – petitioner to refund certain amounts and also to pay the GBI to the Project Proponents for power purchased from them. The Commission, while disposing of the said petition Nos. 23 of 2013(D) and 35 of 2013(D) passed the order dated 23.12.2013, the operative portion of which as under:

> "*Conclusions:*
>
> *49. In view of our above detailed discussion, the petitions are disposed of with the following order:*
>
> *(1) CSPDCL should take up the issue of GBI in appropriate forum and if required it may seek justice and legal remedy from competent authority under the provisions of law.*

(2) *Clause 2.5 of MOU-2 should be in accordance with clause 6.2 and 6.3 of the prescribed guidelines. Thereafter, provisions for delay payment surcharge should be appropriately incorporated in the PPA between CSPDCL and petitioners by 31.03.2014. Additional clause inserted in clause 3 of the second supplementary PPA dated 25.01.2012 is refused. This additional clause in clause 3 inserted through second supplementary PPA dated 25.01.2012 shall be deleted.*

(3) *Provision of delay payment surcharge shall be incorporated in PPA by 31.03.2014.*

(4) *Tariff as decided in suo-motu petition no 37 of 2012(T) shall be incorporated in PPA after the issue of GBI is resolved between CSPDCL and IREDA, preferably by 31.03.2014.*

(5) *The CSPDCL is directed to rectify the bills for power purchase for power purchased from both the petitioners and make payments to the parties as per methodology specified in para 31. Subsequently, the GBI should be claimed by CSPDCL from IREDA.*

(6) *CSPDCL is directed to modify the clause for interconnection point in the PPA by 31.03.2014. The power supply by developers from the month of April 2014 and onwards should be billed without deducting energy loss of dedicated lines.*

(7) *The CSPDCL is directed to comply order dated 09.10.2012, irrespective of the fact that GBI is not disbursed to it by IREDA as per guidelines prescribed by MNRE, Govt. of India.*

(8) *Action under Section 142 is not initiated at this stage and the CSPDCL is given one more opportunity to comply the order dated 09.10.2012 and guidelines issued by MNRE, Govt. of India.*

(9) *CREDA is advised to take up the issue of GBI with appropriate authorities.*"

18. The petition filed by the respondent No.1 – petitioner before the CSERC was, however, rejected by the State Commission *vide* its order dated 02.01.2015. The said order of the State Commission was challenged by the respondent No.1 – petitioner before the Appellate Tribunal for Electricity in an appeal under Section 111 of the Electricity Act, 2003 with the prayer to set aside the order of the State Commission, dated 02.01.2015 and also to direct that the respondent No.1 – petitioner is liable to pay tariff at the rate

of Rs. 15.84/kWh as determined by the State Commission *vide* its order dated 08.09.2008 read with the amended order dated 09.07.2010.

19. The said appeal was, however, dismissed by the Appellate Tribunal *vide* its order dated 23.09.2015. After dismissal of the appeal, the respondent No.1 – petitioner wrote a letter to the appellant on 28.02.2017 requesting a release of an amount of Rs. 7,17,192/-, by calculating the GBI at the tariff rate of Rs. 17.91 kWh. Thereafter, the respondent No.1 – petitioner wrote several letters requesting the appellant to calculate the GBI at the rate of Rs. 17.91 *minus (-)* Rs. 5.67 and objecting to the GBI being computed at the tariff of Rs. 15.84 kWh. The appellant, however, again informed the respondent No.1 – petitioner *vide* its letter dated 06.04.2017 that the tariff at the time of registration of the project will only be considered for the purposes of computing the GBI.

20. It is in this background that W.P.(C) No. 4527/ 2017 was filed which has been allowed by means of the judgment and order under appeal.

SUBMISSIONS ON BEHALF OF THE APPELLANT

21. Learned counsel for the appellant in both these appeals have primarily raised two arguments assailing the judgment and order under appeal passed by the learned Single Judge. The first argument on behalf of the appellant is that clause 8 of the Scheme dated 16.06.2010 issued by the Ministry provides that it is the decision of the Committee constituted by the Ministry for Removal of Difficulties arising in giving effect to any provision of the Scheme/Guidelines or interpretation of the Guidelines, which shall be final and binding.

22. Further submission in this regard is that once the said Committee took a decision in its meeting held on 15.03.2013 to the effect that tariff at the time of registration of project i.e. Rs. 15.84/kWh shall alone be considered for computation of GBI which shall remain constant for a period of 25 years, any claim of computation of GBI based on different tariff, may be the one determined by the SERC, is not tenable. It has further been argued that the said decision of the Committee, dated 15.03.2013, has never been challenged by the respondent No.1 – petitioner as such the same became final and binding on all concerned, including the Distribution Entity, which in this case is the respondent No.1 – petitioner.

23. The other argument impeaching the judgment and order passed by the learned Single Judge as raised on behalf of the appellant is that the issue raised in this petition stood concluded by the decision of the appellate authority *vide* its judgment dated 23.09.2015 and the petition before the learned Single Judge was instituted in the year 2017 after about a period of two years which could not have been entertained by the learned Single Judge without determining the issue raised by the appellant based on Principle of Estoppel, acquiescence and waiver and delay and laches.

24. Elaborating the said ground further, it has been contended by learned counsel for the appellant that the learned Single Judge though noted in the judgment and order under appeal herein, the plea of Estoppel taken by the appellant, however, no finding on the said plea has been rendered which vitiates the judgment and order passed in the writ petition.

25. It has also been argued that the petition filed by the respondent No.1 – petitioner before the learned Single Judge could not have been entertained for the reason that, in fact, what was prayed therein was a direction for refund of the money and since no such claim for recovery of money could be entertained beyond limitation for instituting a suit for recovery of money as such any prayer for issuance of direction for recovery of money disguised as mandamus could not have been entertained by the learned Single Judge in the writ petition filed by the respondent No.1 – petitioner.

26. Adding further to the said argument, learned counsel for the appellant also submitted that the claim put forth by the respondent No.1 – petitioner was barred by Principle of Estoppel as it had expressly waived its objections to the GBI being paid at Rs. 15.84/kWh, and as a matter of fact, such claim stood acquiesced to the consistent stand of the appellant i.e. IREDA that the GBI shall be calculated on the basis of tariff determined on the date of registration of the project. In support of its contentions regarding not paying the revised tariffs of Rs. 17.91/kWh to the Project Proponents, the submission made by the respondent No.1 – petitioner before the SERC and also before the Appellate Tribunal in the appeal has been brought to our notice.

27. Reliance has been placed on the contention raised by the respondent No.1 – petitioner before the appellate authority where it was stated that the respondent No.1 – petitioner had requested release of GBI from IREDA and the Ministry under a mistaken understanding that GBI permitted revised tariff after registration. It is also stated that both the SERC and the Appellate Tribunal in their judgments dated 02.01.2015 and 23.09.2015, respectively,

have held that the respondent No.1 – petitioner had to pay revised tariff of Rs. 17.91/kWh to the Project Proponents regardless of how GBI was computed under the Guidelines.

28. Further submission on behalf of the appellants is that in a letter dated 28.06.2013, it was accepted by the respondent No.1 – petitioner that it is bound to pay the power purchase rates as per the prevailing applicable tariff at the time of Power Purchase Agreement as per the order of SERC according to the Ministry's Guidelines and the same was Rs. 15.84/kWh and thus in view of this acceptance any resistance to computation of GBI on the basis of tariff of Rs. 15.84/kWh is not acceptable; rather such a claim is barred having been waived by the respondent No.1 – petitioner.

29. In support of these submissions, learned counsel for the appellant has relied upon the judgment of the Supreme Court in the case of

i. ***Tilokchand and Motichand & Others v. H.B. Munshi and Another***, (1969) 1 SCC 110,

ii. ***Union of India and Others v. N. Murugesan and Others***, (2022) 2 SCC 25,

iii. ***Workmen Through The Joint Secretary (Welfare), Food Corporation of India Executive Staff Union v. Employer In Relation to the Management of Food Corporation of India and Another***, (2023) 8 SCC 116.

ARGUMENTS ON BEHALF OF THE RESPONDENT No.1/ PETITIONER – DISTRIBUTION UTILITY

30. Defending the judgment and order passed by the learned Single Judge which is under challenge herein, learned senior counsel appearing on behalf of the respondent No.1 – petitioner/ Distribution Utility has argued that the reliance placed by the appellant on the decision of the Committee dated 15.03.2013 is highly misplaced for the reason that such a decision is beyond the scope of the powers of the Committee as per Clause 8 of the Scheme which provides that the decision of the Committee shall be binding on all parties if such a decision is taken to remove any difficulty arising in giving effect to any provisions of the Guidelines/ Schemes or interpretation of the same, and in the instant case, the decision of the Committee cannot be said to be towards removal of difficulty which could be said to have arisen in giving effect to the scheme or in relation to its interpretation.

31. Further submission on behalf of the respondent No.1 is that the decision of the Committee runs contrary to the scheme, which explicitly provided that GBI shall be equal to the difference between the tariff determined by the CERC and the base rate. He has further argued that such a decision is even against the MoU-2 entered into between the appellant and the respondent No.1 – Company, clause 1.4 whereof explicitly provides that the applicable rate for the purpose of GBI computation shall be calculated as the difference between the applicable CERC tariff rate and the applicable base rate.

32. It is thus the submission of learned counsel for the respondent No.1 – petitioner that the Committee's decision dated 15.03.2013 overrides the provision of the scheme dated 16.06.2010 and is also beyond the terms of the MoU-2.

33. Refuting the submission made on behalf of learned counsel for the appellant that the Committee's decision dated 15.03.2013 will have to be taken into account for the purpose of calculating the GBI, it has been argued on behalf of the respondent No.1 – petitioner that the said decision of the committee, in fact, alters the Scheme/ Guidelines and also the terms of the Memorandum of Understanding entered into between the appellant and the respondent No.1 – petitioner (MoU-2), which is impermissible.

34. As far as the ground taken by the appellant about the petition being barred on account of operation of principles of waiver and acquiescence and delay and laches etc., is concerned, it has been agued on behalf of the respondent No.1 – petitioner that the issue relating to mode of calculation of GBI has been agitated by the respondent No.1 – petitioner at various fora, including before the appellants, namely IREDA and the Ministry as also before the SERC and the Appellate Tribunal and, therefore, merely because such issue was raised before the SERC and the Appellate Tribunal, it cannot be said that the plea raised by the respondent No.1 – petitioner by instituting the writ petition before the learned Single Judge was barred by the principle of waiver or acquiescence or delay and laches.

35. It is further submitted on behalf of the respondent No.1 – petitioner that merely because it chose a wrong forum of agitating the issue relating to mode of computation of GBI by approaching the SERC, and thereafter the Appellate Tribunal, it cannot be said that petition instituted by it before the learned Single Judge under Article 226 of the Constitution of India was not maintainable.

36. Based on the aforesaid submissions these appeals have vehemently been opposed by learned counsel representing the respondent No.1.

ISSUES

37. On the basis of the pleadings available before us on these Appeals and the submissions made by learned counsel for the respective parties, the issues which emerge for our consideration and determination are as under: -

(A) As to whether the decision of the Committee constituted for Removal of Difficulties under Clause 8 of the Scheme/Guidelines dated 16.06.2010, is tenable.

(B) As to whether the claim put forth by the respondent No.1 – petitioner by instituting the proceedings of the writ petition before the learned Single Judge can be said to be barred on the principle of waiver and acquiescence and delay and laches.

DISCUSSION AND ANALYSIS

38. So far as issue (A) as culled out above, we have to analyse the decision of the Committee, dated 15.03.2013 in the light of the provisions of Scheme/Guidelines dated 16.06.2010 and the relevant clause in the Memorandum of Understanding entered into between the appellants and the respondent No.1 – petitioner (MoU-2).

39. As already noticed above, to defend the decision of the Committee dated 15.03.2013 reliance was placed by learned counsel for the appellant on Clause 8 of the Scheme/Guidelines dated 16.06.2010 which had already

been extracted above in Paragraph 9 of this judgment. The said clause provides that in a situation where difficulty arises in giving effect to any provision of the Guidelines or in relation to interpretation of the said Guidelines, the Committee to be constituted by the Ministry shall meet and take decision which will be binding on all parties. Thus, the Committee under Clause 8 of the Scheme/Guidelines is empowered to take decision in a situation where any difficulty arises either (i) in giving effect to any provision of this Scheme/Guidelines, or (ii) in relation to interpretation of the said Scheme/Guidelines. However, in our considered opinion, while taking such a decision under its power to remove difficulties clause of the Scheme dated 16.06.2010, the Scheme itself cannot be altered; neither the any clause of the Memorandum of Understanding (MoU-2) can be changed.

40. As noticed above, the Scheme/Guidelines dated 16.06.2010 clearly provides that 'the GBI shall be equal to the difference between the tariff determined by the CERC and the base rate', however, the Committee in its decision dated 15.03.2013 has decided that the tariff at the time of the registration of the project i.e. Rs.15.84/kWh shall alone be considered for payment of GBI which is the rate of tariff determined by the SERC and not by the CERC. The CERC had determined tariff at the rate of Rs. 17.91/kWh whereas the SERC had determined the tariff at the rate of Rs. 15.84/kWh.

41. In our opinion, while exercising the power of Removal of Difficulties in giving effect to the Guidelines or the Scheme or interpretation of the scheme, the very provision of the Guidelines could not have been changed by the Committee for the reason that such an act on the part of the Committee will amount to re-writing the Guidelines issued by the Ministry

which could be altered by the Ministry and not by any Committee constituted under Clause 8 of the said Guidelines. Further it is also to be noticed that the respondent No.1 – petitioner had entered into a Memorandum of Understanding (MoU-2) with the appellant – IREDA wherein, as well, it was clearly provided that the applicable rate for computation of GBI payable to the GBI applicant shall be computed as difference between the applicable CERC tariff rate i.e. the tariff determined by the CERC and applicable base rate. The terms of the Agreement entered into between the parties thus, was beyond the scope of the change or alteration by Committee constituted under Clause 8 of the Scheme/Guidelines dated 16.06.2010.

42. In our considered opinion, what all could have been done by the Committee under clause 8 of the Scheme/Guidelines was that it could have determined an issue, which could have arisen between the parties giving rise to some difficulty in implementation of the Scheme/Guidelines. The scope of the powers available to the Committee under Clause 8 could not encompass in its fold any power to alter an agreement arrived at between the parties which goes against the principle of maintaining the sanctity of a contract or an agreement.

43. Accordingly, we have no hesitation to hold that the plea raised by learned counsel for the appellant – IREDA and also by the Ministry that the decision of the Committee dated 15.03.2013 would determine the mode of computation of GBI to be paid to the respondent No.1 – petitioner, is not tenable.

44. As far as issue (B) as set out above is concerned, it is to be seen and determined as to whether in the given facts and circumstances of the case, the respondent No.1 – petitioner had waived its claim having accepted the decision of the appellant that GBI shall be computed on the basis of tariff determined at the time of registration of the project.

45. In other words, we need to examine as to whether in the facts and circumstances of the case, the learned Single Judge ought to have entertained the claim as put forth by the respondent No.1 – petitioner by instituting the writ petition.

46. The Hon'ble Supreme Court in ***M/s M. Ramnarain Private Limited and Another v. State Trading Corporation of India Limited***, (1983) 3 SCC 75, has elaborately dealt as to when a party approaching the court of law can be said to have waived its right to institute any proceedings where such a party is estopped from exercising its rights. Quoting extensively from Halsbury's Laws of England, the Hon'ble Supreme Court in this case has held that no party can file an appeal against any judgment, decree or order in the absence of a suitable provision of such law conferring on the party concerned, the right to file an appeal and further that right of appeal may be lost to the party in appropriate cases by the provisions of some law and also by the conduct of the party. The Hon'ble Supreme Court has also observed that in appropriate cases a party may be held to have become disentitled from enforcing the right of appeal which he may otherwise have.

47. In ***M/s M. Ramnarain Private Limited*** (supra), as observed above, the Hon'ble Supreme Court has referred to the argument raised in the said

matter based on Halsbury's Laws of England in support of the contention that the appellant in the said case had waived his right of appeal and was estopped from exercising such right.

48. Paragraphs 1471, 1472, 1473 and 1474 of Halsbury's Laws of England, 4th Edn., Vol. 16, as quoted by the Hon'ble Supreme Court in ***M/s M. Ramnarain Private Limited*** (supra), are extracted hereinunder:-

> *"1471. Waiver.—Waiver is the abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance if the right is thereafter asserted, and is either express or implied from conduct. It may sometimes resemble a form of election, and sometimes be based on ordinary principles of estoppel, although, unlike estoppel, waiver must always be an intentional act with knowledge. A person who is entitled to rely on a stipulation, existing for his benefit alone, in a contract or of a statutory provision, may waive it, and allow the contract or transaction to proceed as though the stipulation or provision did not exist. Waiver of this kind depends upon consent, and the fact that the other party has acted on it is sufficient consideration. Where the waiver is not express it may be implied from conduct which is inconsistent with the continuance of the right, without need for writing or for consideration moving from, or detriment to, the party, who benefits by the waiver; but mere acts of indulgence will not amount to waiver; nor can a party benefit from the waiver unless he has altered his position in reliance on it. The waiver may be terminated by reasonable but not necessarily formal notice unless the party who benefits by the waiver cannot resume his position, or termination would cause injustice to him. It seems that, in general, where one party has, by his words or conduct, made to the other a promise or assurance which was intended to affect the legal relations between them and to be acted on accordingly, then, once the other party has taken him at his word and acted on it, so as to alter his position, the party who gave the promise or assurance cannot afterwards be allowed to revert to the previous legal relationship as if no such promise or assurance had been made by him, but he must accept their legal relations subject to the qualification which he has himself so introduced, even though it is not supported in point of law by any consideration.*
>
> *Where the right is a right of action or an interest in property, an express waiver depends upon the same consideration as a release. If it is a mere statement of an intention not to insist upon the right it is not effectual*

unless made with consideration, but where there is consideration the statement amounts to a promise and operates as a release. Even where there is no express waiver the person entitled to the right may so conduct himself that it becomes inequitable to enforce it (this is sometimes called an implied waiver), but in such cases the right is lost on the ground either of estoppel or of acquiescence, whether by itself or accompanied by delay. Where it is claimed that the decision of a tribunal is a nullity, a party's right of action in the High Court is not waived by appeal to a higher tribunal whose decision is expressed by Parliament to be final.

1472. Knowledge of rights essential.— For a release or waiver to be effectual it is essential that the person granting it should be fully informed as to his rights. Similarly, a confirmation of an invalid transaction is inoperative unless the person confirming knows of its invalidity.

1473. Estoppel and acquiescence.— The term 'acquiescence' is used where a person refrains from seeking redress when there is brought to his notice a violation of his rights of which he did not know at the time, and in that sense acquiescence is an element in laches. Subject to this, a person whose rights have been infringed without any knowledge or assent on his part has vested in him a right or action which, as a general rule, cannot be delivered without accord and satisfaction or release under seal.

The term, is, however, properly used where a person having a right, and seeing another person about to commit it in the course of committing an act infringing upon the right, stands by in such a manner as really to induce the person committing the act, and who might otherwise have abstained from it, to believe that he assents to its being committed, a person so standing by cannot afterwards be heard to complain of the act. In that sense the doctrine of acquiescence may be defined as quiescence under such circumstances that assent may be reasonably inferred from it, and is no more than an instance of the law of estoppel by words or conduct, the principle of estoppel by representation applying both at law and in equity, although its application to acquiescence is equitable. The estoppel rests upon the circumstance that the person standing by in effect makes a misrepresentation as to a fact, namely, his own title; a mere statement that he intends to do something, for example, to abandon his right, is not enough. Furthermore, equitable estoppel is not applied in favour of a volunteer.

The doctrine of acquiescence operating as an estoppel was founded on fraud, and for the reason is no less applicable when the person standing by is a minor. As the estoppel is raised immediately by the conduct giving rise to it lapse of time is of no importance, and for the reason the effect of acquiescence is expressly preserved by statute.

1474. Elements in the estoppel.— When A stands by while his right is being infringed by B the following circumstances must as a general rule be present in order that the estoppel may be raised against A: (1) B must be

mistaken as to his own legal rights; if he is aware that he is infringing the rights of another, he takes the risk of those rights being asserted; (2) B must expend money, or do some act, on the faith of his mistaken belief: otherwise, he does not suffer by A's subsequent assertion of his rights; (3) acquiescence is founded on conduct with a knowledge of one's legal rights, and hence A must know of his own rights; (4) A must know of B's mistaken belief; with that knowledge it is inequitable for him to keep silence and allow B to proceed on his mistake; (5) A must encourage B in his expenditure of money or other act, either directly or by abstaining from asserting his legal right. On the other hand there is no hard and fast rule that ignorance of a legal right is a bar to acquiescence in a breach of trust, but the whole of the circumstances must be looked at to see whether it is just that a complaining beneficiary should proceed against a trustee."

49. Thus, what we understand by the Doctrine of Waiver is abandonment of a right in such a way that the other party is entitled to plead the abandonment by way of confession and avoidance. Waiver must always be an intentional act with knowledge. It is also to be seen that waiver may be implied from conduct which is inconsistent with the continuance of the right. We also notice from the quotation from Halsbury Laws of England in ***M/s M. Ramnarain Private Limited*** (supra), that even where there is no express waiver, the person entitled to a right may so conduct himself that it becomes inequitable to enforce it. Such waiver is sometimes called an implied waiver. In such cases the right is lost on the ground either of estoppel or of acquiescence, whether by itself or accompanied by delay.

50. Similarly, acquiescence is put to service where a person refrains from seeking redress when violation of his rights is brought to his notice and in that sense, acquiescence is an element in laches.

51. Argument advanced on behalf of the appellant can also be seen in the light of the ground taken that the writ petition filed by the respondent No.1 – petitioner before the learned Single Judge suffered from delay and laches.

His submission was that essentially by praying a writ of Mandamus before the learned Single Judge, a direction was sought for recovery of money for which limitation for instituting a suit before a court of competent civil jurisdiction had already expired, and therefore, the writ petition ought not have been entertained.

52. The Hon'ble Supreme Court in ***Tilokchand and Motichand*** (supra), while dealing with a petition filed under Article 32 of the Constitution of India has held that a writ under Article 32 is issued if a breach of fundamental right is established and then technical rules applicable to suits like the provisions of Section 80 of the Code of Civil Procedure are not applicable to a proceeding under Article 32. However, this does not mean that in giving relief under Article 32, the Court must ignore and trample all laws of procedure, evidence, limitation, res judicata and the like.

53. In ***Tilokchand and Motichand*** (supra), it has also been held by Hon'ble Supreme Court that the normal remedy for recovery of money paid to the State under coercion or mistake of law is by suit, and the remedies under the Constitution are not intended to entertain claims to recover monies, the recovery of which by suit is barred by limitation. It has further been held that where a writ petition is filed seeking a remedy which corresponds to a remedy in an ordinarily civil suit and the remedy in the civil suit is subject to the bar of a statute of limitation, the Court while exercising writ jurisdiction adopts the statute as its own rule of procedure and in absence of special circumstances imposes the same limitation on the summary remedy in writ jurisdiction. It has further been held that the rule relevant to limitation is founded on the principle of Public Policy.

Paragraphs 39, 40 and 41 of the judgment in ***Tilokchand and Motichand*** (supra), are extracted hereunder:-

> ***"39.*** *The next and the more fundamental question is whether in the circumstances the Court should give relief in a writ petition under Article 32 of the Constitution. No period of limitation is prescribed for such a petition. The right to move this Court for enforcement of fundamental rights is guaranteed by Article 32. The writ under Article 32 issues as a matter of course if a breach of a fundamental right is established. Technical rules applicable to suits like the provisions of Section 80 of the Code of Civil Procedure are not applicable to a proceeding under Article 32. But this does not mean that in giving relief under Article 32 the Court must ignore and trample under foot all laws of procedure, evidence, limitation, res judicata and the like. Under Article 145(1)(c) rules may be framed for regulating the practice and procedure in proceedings under Article 32. In the absence of such rules the Court may adopt any reasonable rule of procedure. Thus a petitioner has no right to move this Court under Article 32 for enforcement of this fundamental right on a petition containing misleading and inaccurate statements and if he files such a petition the Court will dismiss it, see Indian Sugars & Refineries Ltd. v. Union of India, 1968 SCC OnLine SC 158. On grounds of public policy it would be intolerable if the Court were to entertain such a petition. Likewise the Court held in Daryao v. State of U.P. [1961 SCC OnLine SC 21 : (1962) 1 SCR 574] that the general principles of res judicata applied to a writ petition under Article 32. Similarly, this Court has summarily dismissed innumerable writ petitions on that ground that it was presented after unreasonable delay.*
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> ***40.*** *The normal remedy for recovery of money paid to the State under coercion or mistake of law is by suit. Articles 32 and 226 of the Constitution provide concurrent remedy in respect of the same claim. The extraordinary remedies under the Constitution are not intended to enable the claimant to recover monies, the recovery of which by suit is barred by limitation. Where the remedy in a writ application under Article 32 or Article 226 corresponds to a remedy in an ordinary suit and the latter remedy is subject to the bar of a statute of limitation, the Court in its writ jurisdiction acts by analogy to the statute, adopts the statute as its own rule of procedure and in the absence of special circumstances imposes the same limitation on the summary remedy in the writ jurisdiction. On similar grounds the Court of Chancery acted on the analogy of the statutes of limitation in disposing of stale claims though the proceeding in a Chancery was not subject to any express statutory bar, see Halsbury's Laws of England, Vol. 14, page 647, Article 1190, Knox v. Gye. [LR 5 LH 656, 674] Likewise, the High Court acts on the analogy of the statute of*

limitation in a proceeding under Article 226 though the statute does not expressly apply to the proceeding. The Court will almost always refuse to give relief under Article 226 if the delay is more than the statutory period of limitation, see State of M.P. v. Bhailal Bhai at pp. 273-274.

41. *Similarly this Court acts on the analogy of the statute of limitation in respect of a claim under Article 32 of the Constitution though such claim is not the subject of any express statutory bar of limitation. If the right to a property is extinguished by prescription under Section 27 of the Limitation Act, 1963, the petitioner has no subsisting right which can be enforced under Article 32 (see Sobbraj Odharmal v. State of Rajasthan [1962 SCC OnLine SC 204 : 1963 Supp (1) SCR 99, 111]). In other cases where the remedy only and not the right is extinguished by limitation, it is on grounds of the public policy that the Court refuses to entertain stale claims under Article 32. The statutes of limitation are founded on sound principles of public policy. As observed in Whitley Stoke's Anglo-Indian Codes, Vol. 11, p. 940; "The law is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence, and to prevent oppression". In Ruckmaboye v. Lulloobhoy Mottichund [1852 SCC OnLine PC 4 : (1851-52) 5 Moo IA 234, 251] the Privy Council observed that the object of the statutes of limitation was to give effect to the maxim, "interest reipublicoe ut sit finis litium" (co litt 303) the interest of the State requires that there should be a limit to litigation. The rule of res judicata is founded upon the same rule of public policy, see Daryao v. State of U.P. at p. 584. The other ground of public policy upon which the statutes of limitation are founded is expressed in the maxim "vigilantibus non dormientibus jura subveniunt" (2 Co Inst. 690) the laws aid the vigilant and not those who slumber. On grounds of public policy the Court applies the principles of res judicata to writ petitions under Article 32. On like grounds the Court acts on the analogy of the statutes of limitation in the exercise of its jurisdiction under Article 32. It follows that the present petition must be dismissed."*

54. In ***N. Murugesan and Others,*** (supra), Hon'ble Supreme Court has observed that acquiescence means a tacit or passive acceptance. Further observation is that in a situation where instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, allowing it to continue by ignoring the same, acquiescence does take place and as a consequence, such acquiescence reintroduces a new implied agreement between the parties. The Hon'ble

Supreme Court goes on to state that once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms, and therefore, what is essential is the conduct of the parties. Paragraph 25 of the judgment in ***N. Murugesan and Others,*** (supra) is extracted hereinbelow:

> *"**25.** Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."*

55. In the light of the aforesaid well-established legal principles, if the claim of the respondent No.1 – petitioner is analysed, what we find is that the respondent No.1 – petitioner had waived and acquiesced its right for its claim for the following reasons:

(I) The decision of the Committee dated 15.03.2013 constituted under Clause 8 of Scheme/Guidelines dated 16.06.2010 was never challenged, specifically seeking its quashing before any court of law/forum.

(II) In the letter dated 28.06.2013 written by the respondent No.1 – petitioner to the appellant – IREDA, it has been accepted that, 'the respondent No.1 – petitioner is bound to pay the power purchase rates

according to the Guidelines of the Ministry and the same was Rs. 15.84/kWh, only'.

(III) The issue which was sought to be raised in the writ petition before the learned Single Judge was earlier raised by the respondent No.1 – petitioner by instituting proceedings before CSERC and thereafter before the Appellate Tribunal and the plea raised in these proceedings did not succeed and were rather rejected *vide* orders dated 02.01.2015 and 23.09.2015 passed by the SERC and the Appellate Tribunal (APTEL) respectively.

(IV) Once the claim of the respondent No.1 – petitioner was rejected by the Appellate Tribunal (APTEL) *vide* its judgment dated 23.09.2015, the writ petition before the learned Single Judge was filed only in the year 2017 i.e. on 15.05.2017, with unexplained delay.

(V) In its plea filed before the SERC and the Appellate Tribunal (APTEL), the respondent No.1 – petitioner relied upon various communications of IREDA and it was pleaded before the Appellate Tribunal that request for revision of GBI from the Ministry and IREDA was made by the respondent No.1 – petitioner under 'mistaken understanding' that GBI permitted revised tariff after registration.

56. For the aforesaid reasons, what we find is that the respondent No.1 – petitioner, by its conduct appears to have waived its right to claim that for the purpose of computing the GBI, the tariff determined by the CERC should be taken into account. It is a case where the respondent No.1 – petitioner clearly appears to have abandoned its right, which disentitled it to

plead the claim as raised before the learned Single Judge by instituting the petition under Article 226 of the Constitution of India.

57. As explained in ***M/s M. Ramnarain Private Limited*** (supra) by Hon'ble Supreme Court, even in the absence of express waiver, a person entitled to any right if conducts himself in a way that it becomes inequitable to enforce such right, any such claim is lost on the ground either of estoppel or of acquiescence.

58. In the instant case, by expressing its acceptance to the decision of the appellant that the tariff as applicable on the date of registration of the project shall be taken into account for the purpose of calculation of GBI *vide* its letter dated 28.06.2013, the respondent No.1 – petitioner appears to have lost its right by express waiver.

59. Further, the Appellate Tribunal (APTEL) in the proceedings instituted before it by the respondent No.1 – petitioner, has held that the respondent No.1 – petitioner had to pay revised tariff of Rs. 17.91/kWh to the Project Proponents regardless of how GBI was computed under the Guidelines, and the judgment of the APTEL has not been challenged. It is also to be noticed that the claim put forth by the respondent No.1 – petitioner before the learned Single Judge by instituting the proceedings of the writ petition primarily related to a relief of seeking a Mandamus for claiming money, which if claimed by instituting a suit before the court of competent civil jurisdiction would have been barred by limitation, and accordingly, by entertaining such a writ petition, in our opinion, the learned Single Judge has erred in law in the light of the law laid down by the Hon'ble Supreme Court

in ***Tilokchand and Motichand*** (supra) where it has specifically held that any remedy for recovery of money instituted under Article 226 of the Constitution of India is not intended to enable the claimant to recover monies, recovery of which by suit is barred by limitation.

60. The learned Single Judge, however, while passing the judgment and order under appeal herein, has, though referred to the submission of the appellant raised before him that the respondent No.1 – petitioner was estopped from raising any dispute, has not returned any finding on such plea. The plea of estoppel was raised by the appellant before the learned Single Judge, which finds mentioned in the impugned judgment and order; however, no finding on this plea has been returned by the learned Single Judge in his judgment and order under challenge herein.

CONCLUSION

61. In view of the discussions made and reasons given above, we conclude that the claim put forth by the respondent No.1 – petitioner before the learned Single Judge by instituting the writ petition could not have been entertained for the reason that the respondent No.1 – petitioner had waived its right so pleaded by its conduct and further because while entertaining the claim, the learned Single Judge ought to have considered that any claim put forth for recovery of monies would not be entertainable in proceedings under Article 226 of the Constitution of India, if such a claim by way of suit before a court of ordinary civil jurisdiction would be barred by limitation.

62. The appeals are, therefore, allowed. The judgment and order dated 21.05.2025 passed by the learned Single Judge in W.P.(C) 4527/2017 is

hereby set aside and the writ petition filed by the respondent No.1 – petitioner is dismissed. However, there shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

OCTOBER 09, 2025
N.Khanna